

MONTANA LEGISLATIVE HISTORY

Chapter 442 2005

Bill H 349 S _____

Original bill & history ✓ c

H. Committee on Judiciary

Hearing Date(s) _____ c

1/31 ✓ c

_____ c

_____ c

Date Out

2/3 ✓ c

S. Committee on Judiciary

Hearing Date(s) _____ c

3/10 ✓ c

_____ c

_____ c

3/14 ✓

3-21 ✓

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

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REVISE RESPONSIBILITY OF LAW ENFORCEMENT OFFICERS FOR INTOXICATED PERSONS

1/06	FISCAL NOTE NEEDED	
1/19	INTRODUCED	
1/19	REFERRED TO JUDICIARY	
1/31	HEARING	
2/04	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	18
2/04	COMMITTEE REPORT—BILL PASSED AS AMENDED	
2/11	2ND READING PASSED	92
2/12	3RD READING PASSED	91
	TRANSMITTED TO SENATE	
2/22	REFERRED TO JUDICIARY	
3/10	HEARING	
3/14	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED AS AMENDED	9
3/14	COMMITTEE REPORT—BILL CONCURRED AS AMENDED	
3/15	2ND READING CONCURRED	39
3/16	SEGREGATED FROM COMMITTEE OF THE WHOLE REPORT	50
3/16	RREFERRED TO JUDICIARY	50
3/21	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED AS AMENDED	9
3/21	COMMITTEE REPORT—BILL CONCURRED AS AMENDED	
3/23	2ND READING CONCURRED ON VOICE VOTE	50
3/24	3RD READING CONCURRED	47
	RETURNED TO HOUSE WITH AMENDMENTS	
4/11	2ND READING SENATE AMENDMENTS CONCURRED	100
4/12	3RD READING PASSED AS AMENDED BY SENATE	96
4/12	SENT TO ENROLLING	
4/14	RETURNED FROM ENROLLING	
4/14	SIGNED BY SPEAKER	
4/18	SIGNED BY PRESIDENT	
4/18	TRANSMITTED TO GOVERNOR	
4/28	SIGNED BY GOVERNOR	
4/28	CHAPTER NUMBER ASSIGNED	
	CHAPTER NUMBER 442	
	EFFECTIVE DATE: 4/28/2005 - ALL SECTIONS	

REVISE DEPOSIT AMOUNTS FOR STATE LAND LEASES

11/26	FISCAL NOTE NEEDED	
1/19	INTRODUCED	
1/19	FISCAL NOTE REQUESTED	
1/19	REFERRED TO AGRICULTURE	
1/27	FISCAL NOTE RECEIVED	
1/27	FISCAL NOTE PRINTED	
1/27	HEARING	
2/02	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	20
2/02	COMMITTEE REPORT—BILL PASSED AS AMENDED	
2/04	REVISED FISCAL NOTE REQUESTED	
2/10	REVISED FISCAL NOTE REQUESTED	
2/11	REVISED FISCAL NOTE RECEIVED	
2/12	REVISED FISCAL NOTE PRINTED	
3/02	2ND READING PASSED	91
3/03	3RD READING PASSED	92
	TRANSMITTED TO SENATE	
3/04	REFERRED TO AGRICULTURE, LIVESTOCK AND IRRIGATION	
3/09	HEARING	
3/10	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	6
3/10	COMMITTEE REPORT—BILL CONCURRED	
3/11	2ND READING CONCURRED ON VOICE VOTE	49
3/12	3RD READING CONCURRED	42
	RETURNED TO HOUSE	
3/14	SENT TO ENROLLING	
3/15	RETURNED FROM ENROLLING	
3/16	SIGNED BY SPEAKER	
3/16	SIGNED BY PRESIDENT	
3/17	TRANSMITTED TO GOVERNOR	
3/24	SIGNED BY GOVERNOR	
3/24	CHAPTER NUMBER ASSIGNED	
	CHAPTER NUMBER 89	
	EFFECTIVE DATE: 3/24/2005 - ALL SECTIONS	

HOUSE BILL NO. 349

INTRODUCED BY

(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PEACE OFFICER, THE STATE, AND A POLITICAL SUBDIVISION ARE IMMUNE FROM SUIT FOR ANY ACT OR OMISSION ARISING OUT OF THEIR ENFORCEMENT OR ADMINISTRATION OF STATUTES CONCERNING PUBLIC INTOXICATION AND STATUTES CONCERNING THE TREATMENT OF ALCOHOLISM; ELIMINATING THE REQUIREMENT THAT POLICE TAKE PERSONS INCAPACITATED BY ALCOHOL INTO PROTECTIVE CUSTODY; ELIMINATING THE PROHIBITION AGAINST MAKING A RECORD OF ARREST; AMENDING SECTIONS 53-24-107 AND 53-24-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-24-107, MCA, is amended to read:

"53-24-107. Public intoxication not a criminal offense. (1) A person who appears to be intoxicated or incapacitated by alcohol in public ~~commits no~~ does not commit a criminal offense solely by reason of being in such an intoxicated condition but may be detained by a peace officer for the person's own protection. A peace officer who detains a person who appears to be intoxicated or incapacitated by alcohol in public shall proceed in the manner as provided by in 53-24-303.

(2) If none of the alternatives in 53-24-303 are reasonably available, a peace officer may detain a person who appears to be intoxicated or incapacitated by alcohol in jail until the person is no longer creating a risk to himself self or others.

(3) A peace officer, ~~acting within the scope of his authority under this chapter, shall not be personally liable for his actions~~ the state, and a political subdivision are immune from suit for an act or omission arising out of the enforcement or administration of this chapter.

Section 2. Section 53-24-303, MCA, is amended to read:

"53-24-303. Treatment and services for intoxicated persons and persons incapacitated by alcohol. (1) A person who appears to be intoxicated in a public place and to be in need of help may be assisted to the person's home, an approved private treatment facility, or other health facility by the police, ~~if the person~~

1 consents to an offer for help.

2 (2) ~~A person who appears to be incapacitated by alcohol must be taken into protective custody by the~~
3 ~~police and must be taken to an emergency medical service customarily used for incapacitated persons. The~~
4 ~~police, in detaining the person, are taking the person into protective custody and shall make every reasonable~~
5 ~~effort to protect the person's health and safety. In taking the person into protective custody, the detaining officer~~
6 ~~may take reasonable steps for the officer's own protection. An entry or other record may not be made to indicate~~
7 ~~that the person taken into custody under this section has been arrested or charged with a crime~~ A peace officer,
8 the state, and a political subdivision are immune from suit for an act or omission arising out of the enforcement
9 or administration of this chapter."

10
11 NEW SECTION. Section 3. Two-thirds vote required. Because [sections 1 and 2] limit government
12 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each
13 house of the legislature for passage.

14
15 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

16 - END -

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on January 31, 2005 at
9:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: Rep. John Parker (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 222, HB 349, HB 363, 1/20/2005
Executive Action: HB 333-Tabled, HB 313-Tabled, HB
313-Do Pass; HB 262-Do Pass As
Amended

REP. NOENNIG then began his questioning of Mr. Ebzery. He was interested in the reason why insurance rates continue to increase. **Mr. Ebzery** responded to the REPRESENTATIVE that he would try to compile some information that would support the increase in rates. He did state that the Doctors' Company and Utah Medical are the only companies in Montana that provide medical malpractice insurance and this bill could be a tool to encourage other insurance companies to come to Montana.

REP. DRISCOLL then queried Mr. Ebzery about the \$250,000 cap and if it is too high. **Mr. Ebzery** stated that it was not. The REPRESENTATIVE and Mr. Ebzery then discussed the insurance reform that has occurred in California.

REP. MCGILLVRAY posed his questions to Mr. Smith regarding the loss of income from potential problems in the ER and if \$50,000 would be enough if a patient were never able to work again.

REP. GUTSCHE then asked Mr. Smith about whether or not a cap of \$50,000 was placed on lawsuits; and if that would encourage more insurance companies to come to Montana. **Mr. Smith** replied, "...I didn't see how that would help; when the cap is only involving ER/Trauma physicians." The REPRESENTATIVE and Mr. Smith continued to discuss the various insurance reform bills that are being brought forth in this session.

{Tape: 1; Side: B; Approx. Time Counter: 87 - 324}

Closing by Sponsor:

REP. ROBERTS closed the hearing on HB 222 and stated that ER physicians are different from standard care physicians and that SJR 32 is another piece of similar legislation being brought forth this session.

{Tape: 1; Side: B; Approx. Time Counter: 324 - 480}

HEARING ON HB 349

Sponsor: **REP. ALAN OLSON, HD 45, ROUNDUP**

Opening Statement by Sponsor:

REP. ALAN OLSON (R), HD 45, opened the hearing on **HB 349**, Revise responsibility of law enforcement officers for intoxicated persons. The REPRESENTATIVE spoke to the committee about the difficulties officers have when attempting to determine whether a person is intoxicated or incapacitated and the officer's responsibilities in that situation.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 30}

Proponents' Testimony:

Jim Kembel, Montana Association of Chiefs of Police, Montana Police Protective Association, rose in support of HB 349.

{Tape: 2; Side: A; Approx. Time Counter: 30 - 43}

Pam Bucy, Assistant Attorney General, rose in support of this bill. **Ms. Bucy** explained to the committee that she had met with the Montana Municipal Insurance Agency and the Montana Chiefs of Police in reference to this bill. The big question for officers is what to do with people who are intoxicated as it is not against the law in Montana to be intoxicated in public.

She further informed the committee that the jails do not want drunk individuals, nor do the hospitals; and there is only one "detox" center in the state which is in Billings.

Ms. Bucy stated that this bill has a blanket immunity provision; however, some good faith by law enforcement is needed as stated in 45-15-406 MCA.

{Tape: 2; Side: A; Approx. Time Counter: 43 - 110}

Opponents' Testimony:

Al Smith, Montana Trial Lawyers Association, rose in opposition to HB 349. He spoke of the public policy and that Montana has failed to provide treatment for intoxicants. He stated that in this bill absolute immunity would be given to officers and that currently those officers already have that immunity. **Mr. Smith** continued with his testimony by asking, "Where is the compelling state interest for this bill." **Mr. Smith** stated, "...instead of this bill, why doesn't Montana provide treatment for these people?"

{Tape: 2; Side: A; Approx. Time Counter: 110 - 157}

Tim Dick, attorney, rose to oppose HB 349. Mr. Dick was also opposed to the amendments. He related a story to the committee about his client who was intoxicated and then injured after a law enforcement officer intervened and returned the man to the intoxicant's own place of residence.

{Tape: 2; Side: A; Approx. Time Counter: 157 - 204}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. DRISCOLL queried the sponsor about a situation in her home district where a tavern is located and where many homeless people convene. She asked, "...would this bill limit the police taking action in that area." **REP. OLSON** replied, "No, it would not."

REP. LANGE posed his questions to Mr. Smith. The REPRESENTATIVE related a story to the committee and Mr. Smith about the person in Billings who had suffered a stroke; however, law enforcement perceived that person as intoxicated and did not transport that person to a hospital for treatment. There was a lawsuit filed and a \$2 million award for that person. **REP. LANGE** wanted to know if this bill would alter that process. **REP. OLSON** stated that this bill would take away the requirement of law enforcement to take a person to a hospital immediately. **REP. LANGE** stated that he was leery of officers having to make judgement calls regarding someone's well-being.

The REPRESENTATIVE then asked Mr. Smith if HB 349 would take out the criminality factor. **Mr. Smith** replied that in Section 1 it would keep in but would take out of Section 2.

REP. BECKER asked the sponsor if there is a definition in statutes for "incapacitated?" **REP. OLSON** replied, "Yes, in 53-24-104, MCA."

REP. HARRIS then began his questioning of Ms. Bucy. He was interested in whether or not the immunity provision could affect the "good faith act." **Ms. Bucy** responded that this bill would give officers more capabilities and options to handle the situation. **REP. HARRIS** was also interested in the compelling state interest for this bill. **Ms. Bucy** replied that this bill is about giving law enforcement more of a reason to take action. As it is right now, **Ms. Bucy** stated that there are huge lawsuits regarding this issue and the money awarded in lawsuits is "killing" local government budgets.

{Tape: 2; Side: A; Approx. Time Counter: 204 - 491}

Closing by Sponsor:

REP. OLSON closed the hearing on HB 349 by saying that there must be some incentives to have officers to do the "right thing." The REPRESENTATIVE referred to 53-24-303, MCA for the definitions of intoxicated and incapacitated. **REP. OLSON** remarked to the committee members that he would work on amendments.

{Tape: 2; Side: A; Approx. Time Counter: 491 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 58}

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 1/31/05

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. DIANE RICE, CHAIR	X		
REP. RON STOKER, VICE CHAIR	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE	X		
REP. TOM MCGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER			X
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON	X		
REP. JEANNE WINDHAM	X		

**Montana House of Representatives
Visitors Register**

JUDICIARY COMMITTEE

Date 1/31/05

Bill No. HB-349 Sponsor(s) Rep. A. Olson

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
Jim Kember	MT ASSOC. Chief of Police MT Police Prot. Assoc.	X		
A. Smith	MTLA		X	
Tim Dick	-		X	
Pam Buey	DOJ	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on February 3, 2005 at
8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: None, 1/12/2005
Executive Action: HB 265, 231-Tabled;
HB 285, 245, 356, 349, 363-Do Pass As
Amended

Motion: REP. STOKER moved that HB 356 DO PASS AS AMENDED.

Discussion:

The committee members discussed the "notarized" language in the bill as to the certainty of public safety issues. The discussion also involved whether or not a written copy should be provided to the applicant of what information is to be released.

Motion: REP. BECKER moved that HB 356 BE AMENDED with a CONCEPTUAL AMENDMENT for Page 2, end of Line 1 to insert "...to be given a copy of information." Motion carried by voice vote.

Motion/Vote: REP. STOKER moved that HB 356 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 401 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 227}

EXECUTIVE ACTION ON HB 349

Motion: REP. NOENNIG moved that HB 349 DO PASS.

Discussion:

Motion/Vote: REP. NOENNIG moved that HB 349 BE AMENDED with a CONCEPTUAL AMENDMENT for Page 1, at the end of Line 24, to cross out "an" and insert "good faith," cross out "arising out" and insert "under the sections" and Page 2, Line 8 and 9, the same changes. Motion carried unanimously by voice vote.

Motion: REP. STOKER moved that HB 349 DO PASS AS AMENDED.

Discussion:

Motion/Vote: REP. LANGE moved that HB 349 BE AMENDED with a CONCEPTUAL AMENDMENT for Page 1, Line 21, to delete "in jail." Motion carried unanimously by voice vote.

Motion/Vote: REP. STOKER moved that HB 349 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 227 - 500}

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 2/3/05

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. DIANE RICE, CHAIR	X		
REP. RON STOKER, VICE CHAIR	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE	X		
REP. TOM MCGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X		
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON	X		
REP. JEANNE WINDHAM	X		

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HOUSE STANDING COMMITTEE REPORT

February 4, 2005

Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 349** (first reading copy -- white) do pass as amended.

Signed: _____

Diane Rice
Representative Diane Rice, Chair

And, that such amendments read:

1. Page 1, line 21.

Strike: "in jail"

2. Page 1, line 24.

Strike: "an"

Insert: "a good faith"

3. Page 1, line 24 through line 25.

Strike: "arising" on line 24 through "chapter" on line 25

Insert: "under this section"

4. Page 2, line 8.

Strike: "an"

Insert: "a good faith"

5. Page 2, line 8 through line 9.

Strike: "arising" on line 8 through "chapter" on line 9

Insert: "under this section"

- END -

Committee Vote:

Yes 18, No 0.

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2/4/05

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15

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on March 10, 2005 at 8 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Jesse Laslovich (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 285, HB 366, HB 363, HB 409, HB
✓ 349, HB 420, HB 324, 3/3/2005

Executive Action: None.

Department of Transportation approves the test themselves. She stated that the Mining Association also supports the bill.

EXHIBIT(jus53a02)

{Tape: 2; Side: A; Approx. Time Counter: 0 - 10.6}

Margaret Morgan, Treasure State Electrical Contractors, said they have attended national meetings and seminars on oral drug testing and are very interested in being able to apply that for those that have approved drug testing programs in their policy. Oral drug testing is very reliable, easy to administer, and less intrusive on the employee.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. MCGEE asked how this will work for people who inject methamphetamine or heroin into their arms. **REP. GOLIE** said this will be a more accurate test than the urine sample.

SEN. MCGEE asked if drugs taken intravenously show up in saliva. **REP. GOLIE** said that they do show up.

Closing by Sponsor:

REP. GOLIE explained that they do random urine sample testing at his place of work and told how that happens. He said if he is in an accident at work he is automatically tested, it isn't just a random test. This legislation will have no effect on Federally-mandated employers such as trucking companies, state highway or county road departments until the Department of Transportation accepts this test. Non-mandated companies are mines and construction companies. He said employees want a safe workplace, this is less intrusive for the employee, and it is better for the employer. **SEN. MANGAN** will sponsor the bill on the floor.

HEARING ON HB 349

{Tape: 2; Side: A; Approx. Time Counter: 17.5}

Opening Statement by Sponsor:

REP. ALAN OLSON (R), HD 45, ROUNDUP, opened the hearing on **HB 349**, a bill to revise the responsibility of law enforcement

officers for intoxicated persons. The options for intoxicated and incapacitated persons are different, and the options for incapacitated persons are not practical solutions. Some communities do not have the proper facilities, and most hospitals will not admit a person incapacitated by alcohol unless they have other physical injuries. Current law also requires a police officer to make a medical diagnosis, which they are not qualified to make, and imposes liability on the officers if they make an incorrect diagnosis. The bill has the support of the Attorney General, the Montana Association of Chiefs of Police and other law enforcement agencies from around the state.

Proponents' Testimony:

Pam Bucy, Assistant Attorney General, Department of Justice, explained the history of the bill and said that the only detoxification center in the state is in Billings. She said this is an example of failed public policy, and law enforcement people need some guidance and some options for this problem.

{Tape: 2; Side: A; Approx. Time Counter: 17.5 - 26.9}

Bob Worthington, Administrator, Montana Municipal Insurance Authority, noted the immunity portion puts in a standard that the officers have acted in good faith. He asked for support.

Charles Harball, City Attorney, City of Kalispell, said he is often approached by officers looking for reassurance in these situations and how to exercise their best judgment. He said the jails are full and the emergency room will just release the person. The officers are looking for a common-sense approach which would allow the courts to examine the situation and be able to determine whether good faith was exercised. Officers shouldn't be held under strict liability.

Tim Shanks, Captain, Great Falls Police Department and City of Great Falls, said their options are limited since they are not equipped to handle these people. He stated that this bill will give more options and he asked for support.

Bill Dove, Montana Police Protective Association, said this will help make a police officer's job easier. This is a universal problem across the state.

Mark Tymrak, Past President, Montana Association of Chiefs of Police, and Director of Public Safety, City of Bozeman, said this is an everyday occurrence and jail is not the appropriate place to take them. They have a special arrangement with the hospital, but a private security person has to remain with the person taken

into protective custody and in the past he has had to budget \$10,000 for that security. This year's budget is \$23,000.

Marty Ludeman, Uniform Patrol Captain, City of Missoula, urged support of the bill. He said that the incapacitation issue in Missoula doesn't rise to the level of many communities, but they fight with that issue when the person becomes combative at the hospital or they can't be controlled anymore. He said if the person refuses treatment, they can't be forced to seek medical aid and officers feel they have a duty of care.

Jim Smith, Montana Sheriffs and Peace Officers, and Montana County Attorneys Association, stated support for the bill. He said that applying the subtle distinction between incapacitation and intoxication is not easy to do out on the streets and is primary in this bill. Immunity for the officers is secondary.

Gordon Morris, Executive Director, Montana Association of Counties (MACO), asked to have his support expressed at the hearing. Mr. Smith brought the message for him.

{Tape: 2; Side: B; Approx. Time Counter: 6 - 18.7}

Opponents' Testimony:

Jed Fitch, Montana Trial Lawyers Association, said that making the distinction between incapacitation and intoxication should be addressed, but they don't agree with giving immunity. He addressed earlier testimony and said the statute requires the officer to take the person to an emergency medical service customarily used for incapacitated persons. Detoxification facilities don't exist, so that is why the statute doesn't work for the police officers. He did not feel the problem is as big in the legal field as has been described.

He said he researched all the cases the Supreme Court has heard on this statute in the 31 years it has been on the books. He gave details on the cases and said that is why immunity should not be in the statute. He said it should be up to the jury to try the case. Two cases were in 1974: Azure vs City of Billings, and Solberg vs Yellowstone County; the third case was Nelson vs City of Butte in 1995. He said the police officer is not liable under current law, but his state or municipal employer is.

He stated that when an officer acts in good faith and a citizen is hurt or killed due to negligence, they have a right to have their case heard in court and he felt this bill will take away that right.

{Tape: 2; Side: B; Approx. Time Counter: 18.7 - 30}

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. SHOCKLEY asked if it was the opponent's position that the police should detain more citizens and spend more time watching drunks instead of being out on patrol. **Mr. Fitch** said it was not. **SEN. SHOCKLEY** asked for clarification. **Mr. Fitch** said people can't be detained or arrested if it is not an illegal act. They can be taken into protective custody when the person is unable to act rationally. The legislature has created a duty for the police to protect incapacitated people. A situation should not be created where the police have no duty towards incapacitated or intoxicated people on the street. **SEN. SHOCKLEY** said the police always have a duty to protect the citizens, but he did not feel they should be punished. He asked why they can't be protected when they make a good faith mistake. **Mr. Fitch** did not feel they should be punished. The facts in each instance are important and should be flushed out and heard to determine whether it was a good faith act. If they are arrested without any reason and the person is a diabetic rather than a drunk, that person has a right to determine whether it was a good faith act or an oversight by the police and that citizen was harmed by it.

SEN. PERRY referred to Page 1, Line 30, and asked what the definition of "health facility" is in code. **Ms. Bucy** said it is not defined in this statute, and would be any regularly accepted meaning; any hospital or clinic in a community.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 6}

SEN. PERRY asked whether the word "care" could be added to insure the locations are clearly defined. **REP. OLSON** said that was okay.

SEN. CROMLEY asked if the standard were "good faith", wouldn't the jury be able to decide whether the officer had acted in good faith in their treatment of this detainee. **Mr. Fitch** said, "If the standard were "good faith", which is a standard that is not currently defined, yes, the jury would undoubtedly deserve the right to hear it. But when you say 'immunity' it puts the burden of proving whether or not that act was good faith on the person who was injured. He said that the person who caused the injury should have to make more than an act in good faith." He stated that this kind of amendment invites future litigation. He challenged anyone to say what "good faith" means in an actual sense when all the facts are not known. He felt that every case would have to be reargued.

SEN. CROMLEY referred to Page 2, Subparagraph 2 and asked why those three things were taken out as he would like them left in.

Ms. Bucy answered that language was stricken because it refers to the incapacitated person. She wouldn't be opposed to putting some of that in the first section. The intent was to remove the distinction between incapacitated person and intoxicated person, have the options available, and not use the mandatory language. Leaving those elements in would not be a problem if the committee chose to do that.

SEN. O'NEIL referred to language that was removed that if the person consents to an offer for help this person would be forced into an ambulance and forced to go to the hospital, and they would be responsible for \$200-\$400 services. He asked if that was the intent and whether it was fair. **REP. OLSON** said, "I don't think that is the intent behind this, but I do believe if someone refuses medical services, how can the services be forced upon them"? The provision still exists on Page 1, Line 29, that if someone wants to refuse medical services, the officer may assist.

Closing by Sponsor:

REP. OLSON closed and asked for support of his bill. He noted from personal experience that in small towns there is only one officer on duty from 5PM to 7AM. He asked **SEN. MANGAN** to carry the bill in the Senate.

HEARING ON HB 420

{Tape: 3; Side: A; Approx. Time Counter: 18.3}

Opening Statement by Sponsor:

REP. PAT WAGMAN, HD 62, LIVINGSTON, opened the hearing on **HB 420**, a bill requiring that a reason be given for denying custody of an abused child to an extended family member. Proposed amendments were passed around.

EXHIBIT(jus53a03)

Proponents' Testimony:

Harris Himes, Montana Family Coalition, stated support.

Betty Jenkins, Missoula, said many times it is the case worker's opinion that a family member should not have the children. She passed around "Child Protective Services and the Juvenile Justice

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

JUDICIARY

DATE 3-10-05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. MICHAEL WHEAT, CHAIRMAN	X		
SEN. BRENT CROMLEY	X		
SEN. AUBYN CURTISS	X		
SEN. JON ELLINGSON	X		
SEN. JESSE LASLOVICH			X
SEN. JEFF MANGAN	X		
SEN. DAN McGEE	X		
SEN. LYNDA MOSS	X		
SEN. JERRY O'NEIL	X		
SEN. GERALD PEASE	X		
SEN. GARY PERRY	X		
SEN. JIM SHOCKLEY	X		
VALENCIA LANE, LSD			
MARI PREWETT, COMMITTEE SECRETARY			

DATE

March 10, 2005

SENATE COMMITTEE ON

Judiciary

BILLS BEING HEARD TODAY:

HB 285, HB 324,
HB 349, HB 363, HB 366, HB 409, HB 420

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OFFICE
TIM SHANKS		BRENTFALLS POLICE DEPT	HB 349 X		
Dallas Erickson		MFC	HB 420 X HB 324		X
HARRIS HIMES		MFC	HB 324		X
"		"	HB 420	✓	
MARTY LUDERMANN		MISSOULA POLICE DEPT	HB 349	X	
GARY MARBUT		MSSA	HB 366	X	
KATHLEEN DOUGATTY		MT NURSES ASSN	HB 363	X	
Jeri DURAN		PPMT	HB 324	X	
Sarah Fredrickson		PPMT	HB 324	X	
Bob Northington		PIA/LIA	HB 349	X	
Bonnie Alexander	449-1133	Orasure Technologies	HB 409	X	
Julie White		Blue Mtn Clinic	HB 324	X	
Cindy Peters		Blue Mountain Clinic	HB 324	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

STATEPHONE 551-1100

DATE 3-10-05

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 285, HB 324, HB 349, HB 363,
HB 366, HB 409, HB 420

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Raquel Castellanos	721-1646	Blue Mountain Clinic	HB 324	✓	
Larry Chambers	443-2846	Myself	HB 324		✓
Bill Done	581-1128	MT Police Protective Assn	HB 349	✓	
Shirley Brown	444-5906	DPHHS-CPSD-Infomater	HB 420		
Jed Fitch	443-3124	MT Trial Lawyers	HB 349		X
Charles Harbison	758-7708	City of Keokuk	HB 349	✓	
David Jensen	266-3501	Self	HB 324	✓	
Pam Buey	444-2026	DOJ			
DOUG NULLE	442-4073	SELF	HB 366	✓	
Paul Zallek	452-9581 x208	Orthodox Christianity	HB 324		X
Kebun Young	443-779f	MCADSV	HB 285		
Kendall Matthew-Johnson	721-4342	Self + Unborn	HB 324	●	✓
Diane Rotering	240-4546	Self + aborted women	HB 324		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

YBATEKORR 551716/00

DATE 3-10-05

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 285, HB 324, HB 349, HB 363

HB 364, HB 409, HB 420

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Pat Clinch	431-6640	MSCPPF	HB 363	X	
Wendy Wini	833-5657	Self	324		X
Beda horitt	431-4937	Friendship Ctr	285	X	
"	"	MT MED ASSN	HB 363		
M. Duane Larson	755-6376	CITY OF KAL	HB 349	X	
MARK TYMPAK	582-2322	MACOP	HB 349	X	
Susan Shabo	846-2717	Self	HB 324		X
Mary Fox	846-1522	Self	HB 324		X
hiron Stomberg	227-6637	Eagle Forum	HB 324		X
Kate Cholewa		MCADSV	HB 285	X	
Kate Cholewa		MT NARAL	HB 324	X	
Steve Gibson		D.O.C	HB 363	X	
GARY MARRAT		SELF	HB 285	X	
Jim Smith		Sheriffs Assoc	363	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

YRATEDRZ BBTYHNGO

DATE 3-10-05

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 285, HB 324, HB 349,

HB 363, HB 366, HB 409, HB 420

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OFFICE
MARGARET MORGAN	431-9836	TREASURY STATE IEC	409	X	
Jonathan Martin	727-5924	Self	HB 324		X
Mary Krug	538-9179	Self	HB 324		X
Bill Krug	538-9179	Self	HB 324		X
Ursula P. Martin	727-5924	Self	HB 324		✓
Hannah Koljonen	453-7043	Self	HB 324		X
Jennifer Solled	866-3570	Self	HB 324		X
Abigail Koljonen	453-7043	Self	HB 324		X
Nicole Martin	727-5924	self	HB 324		X
Linden Martin		MA Co	HB 348	✓	
Jim Smith		Skiffs	HB 349	✓	
Eric Schiedermayer	442-5761	MT Catholic Conference	HB 324		X
Brad Martin	442-9520	MT Democratic Party	HB 324	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

YANVENEZ 331711100

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on March 14, 2005 at 8:00
A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 201, HB 49, HB 191, HB 696
Executive Action: HB 97; HB 98; HB 285; HB 345; HB
349; HB 363; HB 367

Vote: Motion carried 9-3 by voice vote with SEN. CURTISS, SEN. MCGEE, and SEN. PERRY voting no with SEN. WHEAT voting aye by proxy.

{Tape: 3; Side: B; Approx. Time Counter: 13.7 - 16.7}

SEN. LASLOVICH offered to carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 349

Motion: SEN. MANGAN moved that HB 349 BE CONCURRED IN.

Discussion: SEN. CROMLEY distributed an amendment to the Committee.

EXHIBIT(jus56b08)

Motion: SEN. CROMLEY moved that HB 349 BE AMENDED.

Discussion: SEN. CROMLEY explained that the amendment dealt with the language on Page 2, Subsection 2. He thought that they should remain in the statute and thus the amendment would add them in a new subsection.

SEN. O'NEIL asserted that SEN. CROMLEY'S bill stated that a peace officer should do certain things, yet throughout the remainder of the bill it said that the peace officer would not be held liable if they didn't do these things.

SEN. CROMLEY remarked that the statute would allow an individual to be taken into protective custody by the arresting officer. He indicated that his amendment had the original duties with regard to the care of the person being detained.

{Tape: 3; Side: B; Approx. Time Counter: 16.7 - 21}

Vote: Motion carried unanimously by voice vote with SEN. WHEAT voting aye by proxy.

Ms. Lane related that SEN. PERRY had asked her to do an amendment on Page 1, Line 30.

Motion: SEN. PERRY moved that HB 349 BE AMENDED.

Discussion: SEN. SHOCKLEY supported the second amendment.

Vote: Motion carried unanimously by voice vote with SEN. WHEAT voting aye by proxy.

{Tape: 3; Side: B; Approx. Time Counter: 21 - 22.8}

Motion: SEN. MANGAN moved that HB 349 BE CONCURRED IN AS AMENDED.

Motion: SEN. O'NEIL moved that HB 349 BE AMENDED BY STRIKING SUBSECTION 3, LINES 23-25, PAGE 1, AND SUBSECTION 2, PAGE 2, LINES 7-9.

Discussion: VICE CHAIR MCGEE commented that if this amendment passed it would overturn the entire purpose of the bill.

SEN. O'NEIL did not agree. He thought that the purpose of the bill was contained in the previous amendments and the bill itself. He thought that he was taking out sovereign immunity.

VICE CHAIR MCGEE repeated the proposed amendment.

SEN. MANGAN suggested that if a Committee member were so inclined to vote for SEN. O'NEIL'S amendment they should just vote against the bill and kill the bill because he felt that is what the amendment would do.

{Tape: 3; Side: B; Approx. Time Counter: 22.8 - 24.8}

SEN. CROMLEY thought that the bill would still allow the intoxicated person to be taken into protective custody. He clarified that the bill did two things: 1) allow an intoxicated person to be taken into protective custody, and 2) give immunity to the peace officer. He asserted that he would support the amendment.

Ms. Lane pointed out that they had been discussing the fact that the bill would still allow an individual to be taken into protective custody. She reminded the Committee that the title of the bill on Lines 7-8 removed the distinction between intoxicated and incapacitated. She noted that Subsection 1 of the bill would still allow detaining a person, but it would do away with the concept of protective custody of those incapacitated by alcohol. She agreed with SEN. MANGAN'S idea that if a Committee member did not like what the bill did then they should vote against the bill.

SEN. MCGEE indicated that the first amendment by SEN. CROMLEY would eliminate half of the title of the bill and if they adopted

the amendment by **SEN. O'NEIL** he felt that the other half of the bill would be eliminated.

Ms. Lane commented that on the back of the amendment, HB034901, the language that originally existed, which **SEN. CROMLEY** wanted back in the bill, existed in the protective custody section. She noted that since that had all been removed, the language would apply to detaining a person who is intoxicated. She would not say that **SEN. CROMLEY'S** amendment took away half of the bill, although they were still eliminating the requirements of protective custody.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 2.4}

SEN. ELLINGSON reminded the Committee that a part of the bill was to do away with the distinction between intoxicated and incapacitated. He expressed that the peace officer had to wait until a person showed signs of incapacitation before they could take them into custody currently. He felt that the bill would allow the peace officers to take into custody an individual who was intoxicated but not incapacitated. He thought that it was an important part of the bill.

At this time, **SEN. MCGEE** left the hearing. **SEN. CROMLEY** became vice chair and **SEN. PERRY** held **SEN. MCGEE'S** proxy.

SEN. CURTISS supported **SEN. O'NEIL'S** amendment. She related a story about her son. She thought that it was serious to remove law officers from liability relative to their actions.

{Tape: 4; Side: A; Approx. Time Counter: 2.4 - 5.4}

SEN. PERRY reminded **SEN. CURTISS** and **SEN. O'NEIL** that the bill said "appears to be intoxicated", "until the person is no longer creating a risk to self or others", and "a good faith act". He indicated that the bill was trying to assist the police officers in public safety and caring for persons who appear to be intoxicated or a risk to him or herself. He stressed that they were trying to get away from placing the liability on the police officers if they were doing their job.

SEN. MANGAN thought that, if they passed the amendment, it would be hard for a police officer to help those who are intoxicated and protect the public from them.

Vote: Motion failed 6-6 by roll call vote with **SEN. MANGAN**, **SEN. MCGEE**, **SEN. MOSS**, **SEN. PEASE**, **SEN. PERRY**, and **SEN. SHOCKLEY** voting no with **SEN. WHEAT** and **SEN. MCGEE VOTING BY PROXY**.

{Tape: 4; Side: A; Approx. Time Counter: 5.4 - 10.6}

Vote: Motion carried 9-3 by voice vote with SEN. CURTISS, SEN. O'NEIL, and SEN. WHEAT voting no with SEN. WHEAT voting by proxy.

SEN. MANGAN offered to carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 363

Motion: SEN. SHOCKLEY moved that HB 363 BE CONCURRED IN.

Discussion: SEN. SHOCKLEY brought up SB 172. He thought that SB 172 was more clear and succinct as well as accomplish the same thing.

Ms. Lane reported that SB 172 had been tabled in the House committee. She added that the request came from the sponsor of SB 172 to see if it could be rolled into HB 363. She asserted that in order for her to do that she needed a request from a member of this Committee.

SEN. O'NEIL mentioned that SEN. GEBHARDT had spoken with him and at one point thought that HB 363 would cover what SB 172 was meant to cover. However, he did not think that the bill would cover it unless they added an amendment. He suggested that if, following Line 19, they added "during an emergency response" HB 363 would cover SB 172.

Ms. Lane commented that it would not be that simple. She thought that it would take a more specific amendment. She expressed that HB 363 was drafted to apply only to healthcare providers in a healthcare institutional setting. She explained that the House had specifically taken the language from that section out because they did not want to expand the section of the law to include emergency providers. She insisted that she had to have an indication of the policy decision the Committee wanted made with their amendments.

{Tape: 4; Side: A; Approx. Time Counter: 10.6 - 15.9}

SEN. SHOCKLEY suggested putting the bill aside.

VICE CHAIR CROMLEY cited HB 363 providing for "healthcare provider performing emergency services". He wanted to know if this section would include an emergency responder.

Ms. Lane claimed that this language was one of the problems with coordinating HB 363 and SB 172. She indicated that HB 363 would

8
Date 3-14-05
#8 349

Amendments to House Bill No. 349
3rd Reading Copy

Requested by Senator Brent Cromley

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 11, 2005 (7:31am)

1. Title, line 8 through line 9.
Following: "CUSTODY;" on line 8
Strike: remainder of line 8 through "ARREST;" on line 9
2. Page 1, line 19.
Following: "53-24-303"
Insert: "and subsection (3) of this section"
3. Page 1, line 23.
Following: line 22
Insert: "(3) A peace officer, in detaining the person, shall make every reasonable effort to protect the person's health and safety. The peace officer may take reasonable steps for the officer's own protection. An entry or other record may not be made to indicate that the person detained under this section has been arrested or charged with a crime."
Renumber: subsequent subsection

- END -

(OVER)

HOUSE BILL NO. 349

INTRODUCED BY A. OLSON, PARKER, KLOCK, GEBHARDT, MANGAN, MAEDJE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PEACE OFFICER, THE STATE, AND A POLITICAL SUBDIVISION ARE IMMUNE FROM SUIT FOR ANY ACT OR OMISSION ARISING OUT OF THEIR ENFORCEMENT OR ADMINISTRATION OF STATUTES CONCERNING PUBLIC INTOXICATION AND STATUTES CONCERNING THE TREATMENT OF ALCOHOLISM; ELIMINATING THE REQUIREMENT THAT POLICE TAKE PERSONS INCAPACITATED BY ALCOHOL INTO PROTECTIVE CUSTODY; ~~ELIMINATING THE PROHIBITION AGAINST MAKING A RECORD OF ARREST~~; AMENDING SECTIONS 53-24-107 AND 53-24-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-24-107, MCA, is amended to read:

"53-24-107. Public intoxication not a criminal offense. (1) A person who appears to be intoxicated ~~or incapacitated by alcohol~~ in public ~~commits no~~ does not commit a criminal offense solely by reason of being in ~~such an intoxicated~~ condition but may be detained by a peace officer for the person's own protection. A peace officer who detains a person who appears to be intoxicated ~~or incapacitated by alcohol~~ in public shall proceed in the manner ~~as provided by in~~ 53-24-303 and subsection (3) of this section

(2) If none of the alternatives in 53-24-303 are reasonably available, a peace officer may detain a person who appears to be intoxicated ~~or incapacitated by alcohol~~ in jail until the person is no longer creating a risk to ~~himself~~ self or others.

(4)(3) A peace officer, acting within the scope of his authority under this chapter, shall not be personally liable for his actions. The state, and a political subdivision are immune from suit for an A GOOD FAITH act or omission arising out of the enforcement or administration of this chapter UNDER THIS SECTION."

Section 2. Section 53-24-303, MCA, is amended to read:

"53-24-303. Treatment and services for intoxicated persons ~~and persons incapacitated by alcohol~~. (1) A person who appears to be intoxicated in a public place and to be in need of help may be assisted to the person's home, an approved private treatment facility, or other health facility by the police; ~~if the person~~

(3) A peace officer, in detaining the person, shall make every reasonable effort to protect the person's health and safety. The peace officer may take reasonable steps for the officer's own protection. An entry or other record may not be made to indicate that the person detained under this section has been arrested or charged with a crime."

rized Print Version - HB 349

THIRD READING

1 consents to an offer for help.

2 (2) ~~A person who appears to be incapacitated by alcohol must be taken into protective custody by the~~
3 ~~police and must be taken to an emergency medical service customarily used for incapacitated persons. The~~
4 ~~police, in detaining the person, are taking the person into protective custody and shall make every reasonable~~
5 ~~effort to protect the person's health and safety. In taking the person into protective custody, the detaining officer~~
6 ~~may take reasonable steps for the officer's own protection. An entry or other record may not be made to indicate~~
7 ~~that the person taken into custody under this section has been arrested or charged with a crime~~ A peace officer,
8 the state, and a political subdivision are immune from suit for an A GOOD FAITH act or omission arising out of the
9 enforcement or administration of this chapter UNDER THIS SECTION."

10
11 NEW SECTION. Section 3. Two-thirds vote required. Because [sections 1 and 2] limit government
12 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each
13 house of the legislature for passage.

14
15 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

16 - END -

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

JUDICIARY

DATE 3-14-05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. MICHAEL WHEAT, CHAIRMAN	X		
SEN. BRENT CROMLEY	X		
SEN. AUBYN CURTISS	X		
SEN. JON ELLINGSON	X		
SEN. JESSE LASLOVICH	X		
SEN. JEFF MANGAN	X		
SEN. DAN McGEE	X		
SEN. LYNDA MOSS	X		
SEN. JERRY O'NEIL	X		
SEN. GERALD PEASE	X		
SEN. GARY PERRY	X		
SEN. JIM SHOCKLEY	X		
VALENCIA LANE, LSD			
MARI PREWETT, COMMITTEE SECRETARY			



SENATE STANDING COMMITTEE REPORT

March 14, 2005

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 349** (third reading copy -- blue) be concurred in as amended.

Signed: _____

Senator Mike Wheat, Chair

To be carried by Senator Jeff Mangan

And, that such amendments read:

1. Title, line 8 through line 9.

Following: "CUSTODY;" on line 8

Strike: remainder of line 8 through "ARREST;" on line 9

2. Page 1, line 19.

Following: "53-24-303"

Insert: "and subsection (3) of this section"

3. Page 1, line 23.

Following: line 22

Insert: "(3) A peace officer, in detaining the person, shall make every reasonable effort to protect the person's health and safety. The peace officer may take reasonable steps for the officer's own protection. An entry or other record may not be made to indicate that the person detained under this section has been arrested or charged with a crime."

Renumber: subsequent subsection

4. Page 1, line 30.

Following: "health"

Insert: "care"

- END -

Committee Vote:

Yes 9, No 3.

561246SC.ssc

[Handwritten signature]

34

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 3-14-05 BILL NO. HB 349 NUMBER 1

MOTION: O'Neil amendment

NAME	AYE	NO
SEN. JERRY O'NEIL (R)	X	
SEN. LYNDIA MOSS (D)		X
SEN. JIM SHOCKLEY (R)		X
SEN. JON ELLINGSON (D)	X	
SEN. GERALD PEASE (D)		X
SEN. JEFF MANGAN (D)		X
SEN. DAN MC GEE (R)		X
SEN. MICHAEL WHEAT (D), CHAIRMAN	X	
SEN. BRENT CROMLEY (D), VICE CHAIRMAN	X	
SEN. GARY PERRY (R)	X	X
SEN. JESSE LASLOVICH (D)	X	
SEN. AUBYN CURTISS (R)	X	

6 6

PROXY VOTE

I, the undersigned, hereby authorize Senator Perry to
vote my proxy on any issue before the Senate Judiciary

Committee held on 3/14, 2005.

HB-349

Sen. O'Neill Amendment
Bill

AYE	NAY
✓	✓

McLester
SENATOR
STATE OF MONTANA

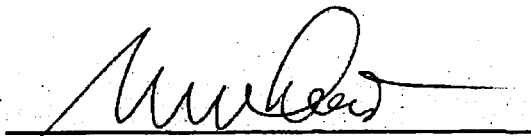
PROXY VOTE

I, the undersigned, hereby authorize Senator ELLINSON to

vote my proxy on any issue before the Senate JUDICIARY

Committee held on 3/14, 2005.

Y ON HB 97
Y TO MOVE HB 98
Y HB 285
Y HB 345
N HB 349
Y HD 367



SENATOR
STATE OF MONTANA

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on March 21, 2005 at
10:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Jim Shockley (R)

Members Excused: Sen. Lynda Moss (D)
Sen. Gary L. Perry (R)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: None.
Executive Action: HB 349, HB 331 & HB 747

CHAIRMAN WHEAT informed the Committee the first bill they were going to deal with was HB 349. He reminded everyone that SB 349 had been passed out of Committee, however, it had been returned to Committee as it needed an amendment. He continued saying HB 349 was the bill dealing with public intoxication and how police officers were to deal with those individuals.

SEN. ELLINGSON stepped out of the meeting.

EXECUTIVE ACTION ON HB 349

Motion: **SEN. MANGAN** moved that HB 349 BE CONCURRED IN.

Amendment No. HB034903.avl was distributed to the Committee and is attached as Exhibit 1.

EXHIBIT(jus62a01)

Motion: **SEN. MANGAN** moved that AMENDMENT NO. HB034903.AVL BE ADOPTED.

SEN. MANGAN explained these were the amendments that **Mr. Smith** and **Mr. Kembel** and others from law enforcement worked out as a compromise. He then turned the explanation over to **Valencia Lane**.

Ms. Lane explained that the amendment on Page 1, at the bottom, put Subsection 4 back to existing language, but gender-neutral. He went on to say that essentially it no longer extends the immunity to the State and political subdivisions. She further stated current law would stay as is, therefore, it would only be the officer. She continued explaining where else the same amendment would apply.

Discussion:

SEN. MCGEE asked if they should segregate item number 4 from the amendment. **Ms. Lane** replied they could because it is already covered on Page 1 in the new language in Subsection 4. She further stated it was not necessary, however, it did not hurt anything to put it in.

Vote: Motion that AMENDMENT NO. HB034903.AVL BE ADOPTED carried 9-1 with **SEN. CURTISS** voting no and **SEN. MOSS** voting aye by proxy.

Amendments to House Bill No. 349
Reference Copy

Requested by Senator Jeff Mangan

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 19, 2005 (12:52pm)

1. Title, line 4 through line 6.

Following: the second "AN ACT"

Strike: remainder of line 4 through "ADMINISTRATION OF" on line 6

Insert: "REVISING"

2. Title, line 7.

Following: line 6

Strike: "STATUTES CONCERNING"

3. Page 1, line 28 through line 29.

Following: "actions" on line 28

Strike: remainder of line 28 through "SECTION" on line 29

Insert: "acting within the scope of the officer's authority under
this chapter, is not personally liable for the officer's
actions"

4. Page 2, line 12 through line 13.

Following: line 11

Strike: "the state," on line 12 through "SECTION" line 13

Insert: "acting within the scope of the officer's authority under
this chapter, is not personally liable for the officer's
actions"

5. Page 2, line 15 through line 17.

Strike: section 3 in its entirety

Renumber: subsequent section

- END -

HOUSE BILL NO. 349

INTRODUCED BY A. OLSON, PARKER, KLOCK, GEBHARDT, MANGAN, MAEDJE

A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROVIDING THAT A PEACE OFFICER, THE STATE, AND A~~
~~POLITICAL SUBDIVISION ARE IMMUNE FROM SUIT FOR ANY ACT OR OMISSION ARISING OUT OF THEIR~~
~~ENFORCEMENT OR ADMINISTRATION OF STATUTES CONCERNING PUBLIC INTOXICATION AND~~
~~STATUTES CONCERNING THE TREATMENT OF ALCOHOLISM; ELIMINATING THE REQUIREMENT THAT~~
POLICE TAKE PERSONS INCAPACITATED BY ALCOHOL INTO PROTECTIVE CUSTODY; ELIMINATING
THE PROHIBITION AGAINST MAKING A RECORD OF ARREST; AMENDING SECTIONS 53-24-107 AND
53-24-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-24-107, MCA, is amended to read:

"53-24-107. Public intoxication not a criminal offense. (1) A person who appears to be intoxicated
or incapacitated by alcohol in public ~~commits no~~ does not commit a criminal offense solely by reason of being
in such an intoxicated condition but may be detained by a peace officer for the person's own protection. A peace
officer who detains a person who appears to be intoxicated ~~or incapacitated by alcohol~~ in public shall proceed
in the manner as provided by in 53-24-303 AND SUBSECTION (3) OF THIS SECTION.

(2) If none of the alternatives in 53-24-303 are reasonably available, a peace officer may detain a
person who appears to be intoxicated ~~or incapacitated by alcohol~~ in jail until the person is no longer creating a
risk to himself self or others.

(3) A PEACE OFFICER, IN DETAINING THE PERSON, SHALL MAKE EVERY REASONABLE EFFORT TO PROTECT THE
PERSON'S HEALTH AND SAFETY. THE PEACE OFFICER MAY TAKE REASONABLE STEPS FOR THE OFFICER'S OWN
PROTECTION. AN ENTRY OR OTHER RECORD MAY NOT BE MADE TO INDICATE THAT THE PERSON DETAINED UNDER THIS
SECTION HAS BEEN ARRESTED OR CHARGED WITH A CRIME.

~~(3)(4) A peace officer, acting within the scope of his authority under this chapter, shall not be personally~~
~~liable for his actions the state, and a political subdivision are immune from suit for an A GOOD FAITH act or~~
~~omission arising out of the enforcement or administration of this chapter UNDER THIS SECTION."~~

acting within the scope of the officer's authority under
this chapter, is not personally liable for the officer's
actions"

Legislative
Services
Division

Section 2. Section 53-24-303, MCA, is amended to read:

"53-24-303. Treatment and services for intoxicated persons and persons incapacitated by alcohol. (1) A person who appears to be intoxicated in a public place and to be in need of help may be assisted to the person's home, an approved private treatment facility, or other health CARE facility by the police, if the person consents to an offer for help.

(2) A person who appears to be incapacitated by alcohol must be taken into protective custody by the police and must be taken to an emergency medical service customarily used for incapacitated persons. The police, in detaining the person, are taking the person into protective custody and shall make every reasonable effort to protect the person's health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps for the officer's own protection. An entry or other record may not be made to indicate that the person taken into custody under this section has been arrested or charged with a crime. A peace officer,

the state acting within the scope of the officer's authority under ~~at of the~~ this chapter, is not personally liable for the officer's actions"

~~NEW SECTION. Section 3. Two-thirds vote required. Because [sections 1 and 2] limit government liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.~~

~~NEW SECTION. Section 3.~~ ^{3.} ~~Effective date.~~ [This act] is effective on passage and approval.

- END -

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

JUDICIARY

DATE 3-21-05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. MICHAEL WHEAT, CHAIRMAN	X		
SEN. BRENT CROMLEY	X		
SEN. AUBYN CURTISS	X		
SEN. JON ELLINGSON	X		
SEN. JESSE LASLOVICH	X		
SEN. JEFF MANGAN	X		
SEN. DAN McGEE	X		
SEN. LYNDIA MOSS			X
SEN. JERRY O'NEIL	X		
SEN. GERALD PEASE	X		
SEN. GARY PERRY			X
SEN. JIM SHOCKLEY	X		
VALENCIA LANE, LSD			
MARI PREWETT, COMMITTEE SECRETARY			



SENATE STANDING COMMITTEE REPORT

March 21, 2005

Page 1 of 2

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 349** (second house second reading copy -- tan) **be concurred in as amended.**

Signed: 
Senator Mike Wheat, Chair

To be carried by Senator Jeff Mangan

And, that such amendments read:

1. Title, line 4 through line 6.

Following: the second "AN ACT"

Strike: remainder of line 4 through "ADMINISTRATION OF" on line 6

Insert: "REVISING"

2. Title, line 7.

Following: line 6

Strike: "STATUTES CONCERNING"

3. Page 1, line 28 through line 29.

Following: "actions" on line 28

Strike: remainder of line 28 through "SECTION" on line 29

Insert: "acting within the scope of the officer's authority under this chapter, is not personally liable for the officer's actions"

4. Page 2, line 12 through line 13.

Following: line 11

Strike: "the state," on line 12 through "SECTION" line 13

Insert: "acting within the scope of the officer's authority under this chapter, is not personally liable for the officer's actions"

5. Page 2, line 15 through line 17.

Strike: section 3 in its entirety

Renumber: subsequent section

Committee Vote:

Yes 9, No 1.

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44

- END -

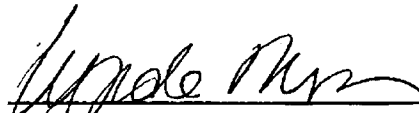
PROXY VOTE

I, the undersigned, hereby authorize Senator WHEAT to

vote my proxy on any issue before the Senate JUDICIARY

Committee held on MARCH 21,, 2005.

HB 349 YES



SENATOR
STATE OF MONTANA



AN ACT REVISING STATUTES CONCERNING PUBLIC INTOXICATION AND THE TREATMENT OF ALCOHOLISM; ELIMINATING THE REQUIREMENT THAT POLICE TAKE PERSONS INCAPACITATED BY ALCOHOL INTO PROTECTIVE CUSTODY; AMENDING SECTIONS 53-24-107 AND 53-24-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-24-107, MCA, is amended to read:

"53-24-107. Public intoxication not a criminal offense. (1) A person who appears to be intoxicated ~~or incapacitated by alcohol in public commits no~~ does not commit a criminal offense solely by reason of being in ~~such an intoxicated~~ condition but may be detained by a peace officer for the person's own protection. A peace officer who detains a person who appears to be intoxicated ~~or incapacitated by alcohol in public~~ shall proceed in the manner ~~as provided by in~~ 53-24-303 and subsection (3) of this section.

(2) If none of the alternatives in 53-24-303 are reasonably available, a peace officer may detain a person who appears to be intoxicated ~~or incapacitated by alcohol in jail~~ until the person is no longer creating a risk to ~~himself~~ self or others.

(3) A peace officer, in detaining the person, shall make every reasonable effort to protect the person's health and safety. The peace officer may take reasonable steps for the officer's own protection. An entry or other record may not be made to indicate that the person detained under this section has been arrested or charged with a crime.

~~(3)(4)~~ (4) A peace officer, acting within the scope of his authority under this chapter, shall not be personally liable for his actions acting within the scope of the officer's authority under this chapter, is not personally liable for the officer's actions."

Section 2. Section 53-24-303, MCA, is amended to read:

"53-24-303. Treatment and services for intoxicated persons ~~and persons incapacitated by~~

~~alcohol.~~ (1) A person who appears to be intoxicated in a public place and to be in need of help may be assisted to the person's home, an approved private treatment facility, or other health care facility by the police, ~~if the person consents to an offer for help.~~

(2) ~~A person who appears to be incapacitated by alcohol must be taken into protective custody by the police and must be taken to an emergency medical service customarily used for incapacitated persons. The police, in detaining the person, are taking the person into protective custody and shall make every reasonable effort to protect the person's health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps for the officer's own protection. An entry or other record may not be made to indicate that the person taken into custody under this section has been arrested or charged with a crime. A peace officer, acting within the scope of the officer's authority under this chapter, is not personally liable for the officer's actions."~~

Section 3. Effective date. [This act] is effective on passage and approval.

- END -